

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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Investigation on the Commission's Own Motion  
Regarding Innovative Utility Ratemaking  
Approaches that Promote Conservation and  
Efficiency Programs by Removing Disincentives  
That May Exist Under Current Ratemaking Policies

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Docket No. 05-UI-114

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**THE COMMENTS OF THE CITIZENS UTILITY BOARD, CLEAN  
WISCONSIN, AND RENEW WISCONSIN ON COMMISSION STAFF  
MEMORANDUM ON DECOUPLING AND SHAREHOLDER INCENTIVES  
SEPTEMBER 17, 2008**

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The Citizens Utility Board, Clean Wisconsin and RENEW Wisconsin (the "Joint Public Intervenors" or "JPI") appreciate the opportunity to comment on the staff memorandum dated September 3, 2008 on the topics of decoupling and shareholder incentives.

JPI compliment the staff for developing a good overview of the issues raised by the potential disincentives faced by regulated utilities to very aggressive levels of demand-side management efforts including energy conservation and efficiency, improved rate designs and increased customer-sited renewable applications. We also believe that the staff on most issues provides a good summary of the earlier comments filed in this docket by various parties including JPI. Thus, while there are a number of issues and comments by other parties that deserve response and/or further consideration, we will abide by the Commission's instructions not to use this "opportunity to brief the case or engage in argumentative discourse."

Therefore, we focus our responsive comments on two areas: (1) a general statement concerning the appropriate context in which we believe the Commission should

consider the issues identified in the Staff memorandum and (2) specific responses to Questions 19-24 which parties have not previously had an opportunity to address.

**I. IT IS IMPORTANT TO CONSIDER THE ISSUES IN THIS DOCKET IN THE APPROPRIATE CONTEXT.**

In various parts of the Staff memorandum, there are a number of references to the current level of energy efficiency efforts and a focus on utility energy efficiency efforts. However, to fully consider the pros and cons of decoupling and shareholder incentives, it is appropriate to recognize the importance and effect of both the substantially increased scope and magnitude of demand-side initiatives that should be the desired objective of adopting a decoupling mechanism.

The sources of the disincentives that adversely affect the financial interests of utility investors are far broader than just utility funded or administered energy efficiency programs. Moreover, the potential benefits from effectively mitigating such disincentives are far greater than just a marginal increase in the current trend of energy efficiency savings from existing demand-side efforts. That is why a decoupling mechanism, to be successful, must address all of the primary sources of utility disincentives as well as encourage a utility to aggressively promote all cost-effective demand-side actions (such as improved building and appliance standards) that will provide valuable benefits to customers, the utility and the public interest.

But, it is precisely the substantial increase in customer and public benefits from more aggressive demand-side actions that significantly increases the magnitude and likelihood of the financial risk to utility shareholders. Because more “lost revenues” result in a disproportionately greater loss of earnings, the more potential lost earnings that

are at stake the greater the disincentive to a utility to undertake actions to achieve demand-side benefits. Because the purpose of adopting a decoupling mechanism should be to significantly expand the sources of such benefits as well as to significantly modify/improve the nature of the current trend in achieving such benefits, the difficulty and risk of being able to accurately forecast is also greatly increased. Thus, the appropriate context for considering decoupling should be where the objective is a quantitatively and qualitatively different commitment to capturing increased customer, utility and public benefits from substantially accelerated and expanded demand-side efforts.

## **II. JPI Responses to Questions 19-24**

Following are JPI's responses to those questions which parties have not previously had an opportunity to respond to.

*Question 19: Depending on what type of mechanism is proposed by a utility, what type of information should be filed to support the proposed mechanism?*

The proposed information requirements contained in Appendix C are generally reasonable. However, the guidelines in Section 8 should make clear that the evaluations of items such as risk and service quality should be made by the Commission or an independent third party with the utility only providing the information to allow such evaluations to be conducted.

*Question 20: What criteria should the commission consider in evaluating any decoupling proposal?*

JPI agree that the proposed criteria to evaluate a proposed decoupling mechanism set forth in Appendix D are reasonable, although we do not believe that the Commission should be limited by such criteria. The ultimate issue is whether utility customers will be better off from adopting a decoupling and/or shareholder mechanism than without such a mechanism.

*Question 21: Are hearings required every time bills go up to recover lost sales?*

*Question 22: How frequently should decoupling adjustments be made?*

For reasons of both law and policy, JPI submit that the Commission must and should afford “an opportunity for hearing” prior to a rate increase that might result from the workings of a decoupling mechanism.

On its face, Wis. Stat. § 196.20(2m) requires an investigation, opportunity for hearing and order of the Commission before a rate increase can take effect. In essence, the statute directs that the Commission regulate by command, not by formula. By requiring each of these three steps—investigation, opportunity for hearing and order—the legislature has strongly signaled to the Commission that the matter of utility rate increases requires its most serious attention. The Commission staff memorandum correctly cites *Wisconsin’s Environmental Decade v. Public Service Commission* for the proposition that expanded adjustment clauses are unlawful in Wisconsin because they violate Wis. Stat. § 196.20(2m).<sup>1</sup> To be sure, the expanded adjustment clause in that case

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<sup>1</sup> 81 Wis. 2d 344, 260 N.W.2d 712 (1978).

differs from a decoupling mechanism. The Wisconsin Electric Power Company adjustment clause “included such items as purchased power, fuel, labor, supplies, steam, electric expenses, and supervision.”<sup>2</sup> Decoupling, on the other hand, seeks to ensure that a utility received in revenue neither too much nor too little for its fixed costs. But just as Edmund Burke once famously wrote that “[t]he revenue of the state is the state,”<sup>3</sup> so too is it with public utilities. The revenue of a public utility is the public utility. Attempts to suggest, then, that decoupling has a narrow focus flounder on this reality.

Moreover, the Commission should not look for ways to work around the statute or read into its provisions exceptions in the hope of avoiding the inconvenience of the process required by the statute. Decoupling is novel in Wisconsin. When it is first implemented, the Commission and intervenors *should* look closely to make sure that the decoupling mechanism under review is working as it should and that its inputs (*e.g.*, sales revenues) are accurate. As a practical matter, if and when the application of a decoupling mechanism becomes routine, the likelihood of hearings will diminish. But importantly, the Commission will still have the duty to investigate and to order approve any rate increase necessitated by a decoupling mechanism.

For these reasons, the Commission should reject Alternatives 1 and 4, which seek to sidestep the requirements of Wis. Stat. § 196.20(2m) and instead choose Alternative 3. For reasons of economy of Commission staff and intervenor resources in light of the Wis. Stat. § 196.20(2m) requirements, JPI submit that the Commission should limit decoupling adjustments to once a year to investigations limited to this sole topic. The Commission

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<sup>2</sup> *Id.* at 346.

<sup>3</sup> Edmund Burke, *Reflections on the French Revolution* at 199, (Hackett Publishing Company, 1987)(originally published in 1790.)

could consider more frequent true-ups once experience with decoupling has been developed.

*Question 23: At least in the beginning, should an initial decoupling program be done as a pilot program? For what time period?*

JPI believe that it is appropriate to initially treat a decoupling plan as a pilot that does not exceed four years. The pilot period should not be too short to allow the mechanism the opportunity to achieve its objectives while ensuring that the pilot period is not too long before an assessment of its impacts and effectiveness is made. A decoupling mechanism should also not serve as a substitute for periodically scheduled rate cases in which all revenues, costs and expenses are considered together.

*Question 24: How often should an approved decoupling plan be reviewed?*

JPI agree that there should be periodic evaluations of a pilot decoupling mechanism as proposed by the staff. A twelve month evaluation should be conducted as a limited review of performance to determine if the mechanism is generally meeting expectations. An additional review, at least six months prior to the termination of a pilot, should be conducted if the utility indicates that it wishes to make the pilot mechanism permanent (with or without modifications). The Commission should also always retain its authority to evaluate a pilot decoupling mechanism when appropriate (including based on customer complaint) regardless of a schedule for periodic evaluations.

### III. CONCLUSION

JPI believe that appropriately designed decoupling mechanisms in which utilities are also required and committed to promote and pursue substantially increased benefits to customers in the form of increased energy efficiency, improved rate designs and more aggressive customer-sited renewable resource efforts are in the public interest.

Dated this 17<sup>th</sup> day of September, 2008.

Respectfully submitted,

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